

Under the Enterprise Zone building materials exemption, a deduction from Illinois Retailers' Occupation Tax liability exists for gross receipts from retail sales of building materials that will be incorporated into real estate located in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction. (See Section 5k of the Retailers' Occupation Tax Act and 86 Ill. Adm. Code 130.1951(e).) (This is a PLR.)

November 18, 2005

Dear Xxxxx:

This letter is in response to your letter dated November 24, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to abc for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither abc nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of my company, ABC, I respectfully request a private letter ruling that purchases of repair and replacement parts for our electric generating station are nontaxable under the deduction for 'building materials' incorporated into real estate located in an enterprise zone.

*Material Facts*

ABC owns and operates a 1,250-megawatt electric generation station in the newly expanded enterprise zone in COUNTY, Illinois. ABC is overhauling several of the major components and systems in operation at this plant. In connection with this project, ABC will purchase repair or replacement parts for the following:

- High energy piping
- Primary superheaters
- Reheat superheaters
- Boiler roof tubes
- Backup transformers
- Backup circulating water pump motor
- Wheel in GR fan
- Ash sluice system
- Flash tank safeties
- Remote interface crib for crib house monitoring
- Remote interface for recycle pump house
- Ash handling vacuum pumps, motors and aeration blower
- Condensate polisher controls
- Backup condensate pumps
- OIS consoles
- Flame scanners
- 12 BFP EHC system
- Breathing air compressor
- Coal stacker hydraulic system

Each of the foregoing components or systems is physically integrated with and incorporated into the power plant—*i.e.*, real property.

#### *Relevant Authorities and Ruling Requested*

Illinois imposes a retailers' occupation tax on persons engaged in the business of making retail sales of tangible personal property. 35 ILCS 120/2. (The tax is measured by the seller's gross receipts. 35 ILCS 120/2-10. However, a retailer is allowed a deduction from taxable gross receipts for receipts from sales of 'building materials' that are incorporated into real estate located in an enterprise zone. 35 ILCS 120/2k; 86 Ill. Admin. Code § 130.1951(a)(1).

The controlling regulation holds that property qualifies as a 'building material' if it is purchased for physical incorporation into real estate. 86 Ill. Admin. Code § 130.1951(e). The repair and replacement parts in question constitute building materials because ABC is purchasing them for physical incorporation into real property.

In Private Letter Ruling ST 01-0012 (April 5, 2001), the Department held that fuel handling systems, crushing and pulverizing systems, boiler and furnace systems, ash removal systems and electric generation and transmission equipment qualified as 'building materials' under 86 Ill. Admin. Code § 130.1951(e). In so doing, the Department stated that 'if the building materials or their component parts need to be repaired, those repair and replacement parts that are permanently affixed to real estate qualify for the exemption.'

That ruling is directly on point here. Like the taxpayer requesting that ruling, ABC operates an electric generating station located in an Illinois enterprise zone. Also like the taxpayer in that ruling, ABC is purchasing materials for use in rehabilitating and repairing its power plant facility. Indeed, the property our company is purchasing will be

used in overhauling the *same* components and systems at issue in that ruling. Thus, because the repair and replacement materials we are purchasing will be permanently affixed to real estate, the materials qualify as 'building materials.'

*Regulation Section 1200.100(b) Disclosures*

My company is not under audit from the Department and it is not involved in litigation with the agency. To the best of my knowledge, the Department has never ruled on this or any similar issue for my company or any of its predecessors. My company has never submitted and then withdrawn a request for a ruling on this or any other issue. I request that your ruling delete the name and address of my company before the ruling is disseminated.

In addition, we ask for your timely attention to this ruling request because we anticipate purchasing the repair and replacement parts in question early in the first quarter of 2005. Finally, I ask that if you are unable to grant the ruling requested, you kindly notify me in advance. Feel free to call with questions or comments.

## **DEPARTMENT'S RESPONSE**

Under the Enterprise Zone building materials exemption, a deduction from Illinois Retailers' Occupation Tax liability exists for gross receipts from retail sales of building materials that will be incorporated into real estate located in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act by remodeling, rehabilitation or new construction. (Section 5k of the Retailers' Occupation Tax Act) All "qualified sales" of building materials sold for incorporation into any Illinois enterprise zone are eligible for the deduction. 86 Ill. Adm. Code 130.1951(d)(1) A "qualified sale" means a sale of building materials: a) for incorporation into real estate in an Illinois enterprise zone, b) as part of a building project, c) for which a Certificate of Eligibility for sales tax exemption has been issued, d) by the administrator of the enterprise zone in which the project is located. 86 Ill. Adm. Code 130.1951(d)(2). In order to qualify for the deduction, the materials being purchased must be building materials. 86 Ill. Adm. Code 130.1951(e).

The issue in this PLR is whether the repair or replacement parts for various components or systems that are physically integrated with and incorporated into the power plant can qualify as building materials eligible for the deduction. You have indicated that the repair and replacement parts in question will be purchased early in the first quarter of 2005. Given that this is the case, the most current enterprise zone building materials exemption regulations apply for this ruling.

The Department's regulation at 86 Ill. Adm. Code 130.1951(e) (copy enclosed) provides examples of qualifying building materials. The enterprise zone exemption includes component parts of the building materials that are permanently affixed to realty. If the building materials or their component parts need to be repaired or replaced, those repair and replacement parts that are permanently affixed to real estate qualify for the exemption. The Department's rulings are as follows:

**High Energy Piping:** Heating systems and components thereof can qualify for the enterprise zone building materials deduction. See Section 130.1951(e)(3). You have represented that high energy piping is part of a heating system and all property related to the piping, boiler and turbine systems is affixed to the real property by being bolted, welded, or otherwise permanently mounted to

the support structures. Based upon this representation, the high energy piping, including repair and replacement parts, qualifies for the deduction.

**Primary Superheaters:** Heating systems and components thereof can qualify for the deduction. See Section 130.1951(e)(3). You have represented that the primary superheaters are part of a heating system, and the boiler primary superheater units are affixed to the real property by being bolted and welded to the support structure attached to the reinforced concrete foundations. Based upon this representation, the primary superheaters, including repair and replacement parts, qualify for the deduction.

**Reheat Superheaters:** Heating systems and components thereof can qualify for the deduction. See Section 130.1951(e)(3). You have represented that reheat superheaters are part of a heating system and that the reheat superheaters are suspended above the foundation by welding to the steel reinforced framework attached to the foundation. Based upon this representation, the reheat superheaters, including repair and replacement parts, qualify for the deduction.

**Boiler Roof Tubes:** Heating systems and components thereof can qualify for the deduction. See Section 130.1951(e)(3). You have represented that boiler roof tubes are part of a heating system and that the boiler roof tubes are suspended above the foundation by welding to the steel reinforced framework attached to the foundation. Based upon this representation, the boiler roof tubes, including repair and replacement parts, qualify for the deduction.

**Backup Transformers:** Electrical systems and components thereof that are physically incorporated into the real estate can qualify for the deduction. See Section 130.1951(e)(4). You have represented that the backup transformers are part of an electrical system and that the transformer weighs 585,000 pounds and will be permanently affixed to a reinforced concrete foundation supported by caissons and pilings extending 12 to 27 feet below grade level. Based upon this representation the backup transformers, including repair and replacement parts, qualify for the deduction.

**Backup Circulating Water Pump Motor:** Plumbing systems and components thereof such as water pumps and water pipes can qualify for the deduction. See Section 130.1951(e)(2). You have represented that the backup circulating water pump motor is part of a plumbing system and that the pumps are 64,500 pound devices that are permanently affixed to a concrete reinforced foundation by bolting. The pumps are also connected to piping that is permanently attached to the real property by welding and bolting. As a result of this representation, the backup circulating water pump motor including tubes and piping for the water, steam and natural gas, and repair and replacement parts, qualifies for the deduction.

**Wheel in Gas Recirculation Fan:** Heating systems and components thereof can qualify for the deduction. See Section 130.1951(e)(3). You have represented that the wheel in the gas recirculation fan is part of a heating system, that the fan weighs 11 tons and is bolted to the fan casing, and that the unit is supported in fan bearings, which are permanently affixed to the building structure. Based upon this representation, the wheel in the gas recirculation fan, including repair and replacement parts, qualifies for the deduction.

**Ash Sluice System:** Heating systems and components thereof can qualify for the deduction. See Section 130.1951(e)(3). You have represented that the ash sluice system is part of a heating system and that the ash sluice system consists of piping, gates, and controls, the components of which are welded and bolted to the structure throughout the plant. Based upon this representation, the ash sluice system, including repair and replacement parts, qualifies for the deduction.

**Flash Tank Safeties:** Plumbing systems and components thereof such as water pumps and water pipes can qualify for the deduction. See Section 130.1951(e)(2). You have represented that the flash tank safeties are part of a plumbing system and that the flash tank safeties are welded in place. The flash tank safeties, including repair and replacement parts, qualify for the deduction.

**Remote Interface For Crib House Monitoring:** Electrical systems and components thereof that are physically incorporated into the real estate can qualify for the deduction. See Section 130.1951(e)(4). You have represented that the remote interface for crib house monitoring is an electrical system designed to monitor the operation of pumps with flows of up to 640,000 gallons of water per minute and that the system is comprised of various control boxes, switching controls, wires, circuits, and conduits that are welded and or bolted to walls and run through conduits throughout portions of the plant. Based upon this representation, the remote interface for crib house monitoring, including repair and replacement parts, qualifies for the deduction.

**Remote Internal Recycle Pump Monitoring:** Electrical systems and components thereof that are physically incorporated into the real estate can qualify for the deduction. See Section 130.1951(e)(4). You have represented that the remote internal recycle pump monitoring system is an electrical system designed to monitor the operation of pumps ranging in horsepower from 350-1500 with the capability to pump between 5000-6800 gallons per minute used in the ash disposal process and that the system is comprised of various control boxes, switching controls, wires, circuits, and conduits that are welded and or bolted to walls and run through conduits throughout many areas of the plant. Based upon this representation, the remote internal recycle pump monitoring system, including repair and replacement parts, qualifies for the deduction.

**Ash Handling Vacuum Pumps, Motors and Aeration Blower:** Heating systems and components thereof can qualify for the deduction. See Section 130.1951(e)(3). You have represented that the ash handling vacuum pumps, motors, and aeration blowers are part of a heating system and that the ash handling equipment is permanently affixed to the real property be either bolting or welding it to various reinforced concrete foundations and structures. Based upon this representation, the ash handling vacuum pumps, motors, and aeration blowers, including repair and replacement parts, qualify for the deduction.

**Condensate Polisher Controls:** Electrical systems and components thereof that are physically incorporated into the real estate can qualify for the deduction. See Section 130.1951(e)(4). You have represented that the condensate polisher controls are an electrical system whose function is to control the operation of equipment that is installed to perform on-line continuous purification of the condensate and that the electrical system is comprised of various control boxes, switching controls, wires, circuits, and conduits that are welded and or bolted to walls and run through conduits throughout portions of the plant. Based upon this representation, the condensate polisher controls, including repair and replacement parts, qualify for the deduction.

**Backup Condensate Pumps:** Plumbing systems and components thereof such as water pumps and water pipes can qualify for the deduction. See Section 130.1951(e)(2). You have represented that the backup condensate pumps are part of a plumbing system and that these pumps are permanently affixed to a concrete reinforced foundation by bolting. The pumps are also connected to piping, which is permanently attached to the real property by bolting and welding. Based upon this representation, the backup condensate pumps, pump motors, tubes and piping, including repair and replacement parts, qualify for the deduction.

**Operator Interface Stations (OIS Consoles):** Electrical systems and components thereof that are physically incorporated into the real estate can qualify for the deduction. See Section 130.1951(e)(4). You have represented that the operator interface stations (OIS consoles) are an electrical system whose function is to allow a technician to monitor and operate equipment in nearly every system in the plants and that this system is comprised of numerous control boxes, monitoring controls, wires, circuits, consoles and conduits that are welded and or bolted to walls and run through conduits throughout portions of the plant. Based upon this representation, the operator interface stations (OIS consoles), including repair and replacement parts, qualify for the deduction.

**Flame Scanners:** Electrical systems and components thereof that are physically incorporated into the real estate can qualify for the deduction. See Section 130.1951(e)(4). You have represented that the flame scanners are part of the electrical systems and equipment that monitor efficiency of equipment that supports the production process and that various components of this system are bolted, clamped, and wired throughout the building structure. Based upon this representation, the flame scanners, including repair and replacement parts, qualify for the deduction.

**12 Boiler Feed Pump Electric Hydraulic Control (BFP-EHC) System:** Electrical systems and components thereof that are physically incorporated into the real estate can qualify for the deduction. See Section 130.1951(e)(4). You have represented that the BFP-EHC is part of an electrical system and equipment that support the production process and that the piping and controls for this system will be welded and bolted to the structure throughout many areas of the plant. Based upon this representation, the BFP-EHC, including repair and replacement parts, qualifies for the deduction.

**Breathing Air Compressor:** Heating systems and components thereof can qualify for the deduction. See Section 130.1951(e)(3). You have represented that the breathing air compressor is part of a heating system that and that the breathing air compressor is used to refill the fire fighting equipment breathing air bottles. The unit is securely bolted to the building foundation. Based upon this representation, the breathing air compressor, including repair and replacement parts, qualifies for the deduction.

**Coal Stacker Hydraulic System:** Heating systems and components thereof can qualify for the deduction. See Section 130.1951(e)(3). You have represented that the coal stacker hydraulic system is part of a heating system and that the coal stacker hydraulic system is bolted and mounted to a structure supported by a reinforced concrete foundation that extends to bedrock. Based upon this representation, the coal stacker hydraulic system, including repair and replacement parts, qualifies for the deduction.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote  
Associate Counsel

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